

### **REMARKS**

Claims 1 through 10 are pending in this Application, of which claims 1 through 4 and 7 stand withdrawn from consideration pursuant to the provisions of 37 C.F. R §1.142(b).

Accordingly, claims 5, 6 and 8 through 10 are active.

Claims 5 and 8 have been amended and new claims 9 and 10 added. Care has been exercised to avoid the introduction of new matter. Indeed, adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure. Applicants would refer to, for example, page 16 of the written description of the specification, lines 1 through 5. Applicants submit that the present Amendment does not generate any new matter issue.

#### **Title**

The Examiner asserted that the title is not descriptive. Applicants disagree. At any rate, by the present Amendment the title has been changed consistent with the Examiner's position.

#### **Information Disclosure Statement**

Submitted herewith is an Information Disclosure Statement properly listing the date of the Shiomi et al. reference and a copy of the Shiomi et al. reference appended thereto as originally presented.

**Claims 5, 6 and 8 were rejected under 35 U.S.C. §102 for lack of novelty as evidenced by McDonald et al.**

**Claims 5 and 8 were rejected under 35 U.S.C. §102 for lack of novelty as evidenced by Saito et al.**

Each of the above rejections under 35 U.S.C. §102 is traversed. Specifically, the factual determination of lack of novelty under 35 U.S.C. §102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the public domain. *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). There are fundamental differences between the claimed invention and the devices disclosed by each of McDonald et al. and Saito et al. that scotch the factual determination that each of McDonald et al. and Saito et al. disclose a device identically corresponding to that claimed.

Specifically, the devices defined in each of independent claims 5 and 8 comprises, *inter alia*, an intermediate portion located between the base portion and the sharp-pointed portion. This structural difference between the devices defined in each of the independent claims 5 and 8 and those disclosed by McDonald et al. and Saito et al. undermine the factual determination that each of McDonald et al. and Saito et al. disclose a device identically corresponding to those claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986).

Applicants, therefore, submit that the imposed rejection of claims 5, 6, and 8 under 35 U.S.C. §102 for lack of novelty as evidenced by McDonald et al., and the imposed rejection of

claims 5 and 8 under U.S.C. §102 for lack of novelty as evidenced by Saito et al., are not factually viable and, hence, solicit withdrawal thereof.

**New claims 9 and 10**

New claims 9 and 10 are free of the applied prior art by virtual of their dependence upon claims 5 and 8, respectively, the patentability of which claims have been previously argued.

Based upon the foregoing arguments, Applicants submit that the imposed rejections have been overcome and that all active claims are in condition for immediate allowance. Favorable consideration is, therefore, respectfully solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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